Supreme Court, U. S.
FILED
APR 12 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

SPRING TERM 1979

No. 78-1417

BRYAN M. HANSEN,

Appellant,

vs.

MINNESOTA STATE BOARD OF BAR EXAMINERS,

Appellee.

ON APPEAL FROM THE
SUPREME COURT OF MINNESOTA

MOTION TO DISMISS APPEAL

Vincent Jantz
1111 North State College Bl.
Fullerton, California 92631
Phone: (714) 738-1000
Attorney for Appellant

C. Allen Dosland
Gislason, Dosland, Malecki,
Gislason & Halvorson
One South State Street
New Ulm, Minnesota 56073
Phone: (507) 354-3111
Attorney for Appellee

1979—Northwest Brief Printing Co., 316 Chicago Avenue, Minneapolis 55415—338-5078

IN THE

Supreme Court of the United States

SPRING TERM 1979

No. ———

BRYAN M. HANSEN,

Appellant,

vs.

MINNESOTA STATE BOARD OF BAR EXAMINERS,

Appellee.

ON APPEAL FROM THE
SUPREME COURT OF MINNESOTA

MOTION TO DISMISS APPEAL

Appellee, pursuant to Rule 16(1)b of the Rules of the Supreme Court of the United States, moves for an Order of this Court dismissing the appeal herein on the following grounds: (1) The appeal does not present a substantial federal question; (2) the judgment of the Supreme Court of the State of Minnesota rests on an adequate non-federal basis.

STATEMENT OF FACTS

The appellee adopts the statement of facts set out by the Minnesota Supreme Court in its opinion dated No-

vember 9, 1978 (Appellant's Jurisdictional Statement pp. 11-14).

QUESTIONS PRESENTED

May a state establish standards for admission to the practice of law which include the requirements that the applicant graduate from an approved law school *and* pass a written examination?

May a state refuse admission to the practice of law on an equity basis where the applicant, with full knowledge, failed to act in accordance with the rules of admission?

ARGUMENT

I.

THERE IS NO SUBSTANTIAL FEDERAL QUESTION.

This Court long ago determined that the State of Minnesota has the power to set standards of admission for the professions. In *Graves v. Minnesota,* 272 U.S. 425 (1926), the appellant challenged the Minnesota statute requiring that applicants for a dentist's license acquire a diploma from an *approved* dental college prior to examination by the Board of Dental Examiners. The appellant argued the statute was unreasonable, arbitrary and discriminatory, and violated the Due Process Clause and other provisions of the Fourteenth Amendment of the United States Constitution. To that argument, this Court stated:

> Clearly the fact that an applicant for a license holds a diploma from a reputable dental college has a direct and substantial relation to his qualification to practice dentistry. We cannot say the state is acting arbitrarily or unreasonably when, in the exercise of its judgment, it determines that the holding of such a diploma is a necessary qualification for the practice to dentistry; or that the distinction made in the granting of licenses between applicants who hold such diplomas and those who do not, is a classification which has no real or substantial basis. And the constitutionality of the statute must be sustained." (pp. 428-429.)

This Court has also refused to treat the requirement of graduation from an approved law school prior to admission to the bar as a substantial federal question, *Murphy v. Pennsylvania State Board of Bar Examiners,* 47 U.S.L.W. 3544 (U.S. Feb. 21, 1979) *appeal dismissed and cert. denied.*

The appellant has presented arguments drawn principally from three cases as the basis for jurisdicion in this matter. All of the cases can be distinguished from the instant fact situation and the appellant has failed to present a substantial federal question for consideration by this Court.

The appellant first makes reference to *Schware v. New Mexico Board of Bar Examiners,* 353 U.S. 232 (1957) and cites it in favor of the proposition that:

> "A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the due process or equal protection clause of the Fourteenth Amendment." (pp. 238-239)

This goes without saying, but the Court in *Schware* also held that the state may regulate an occupation affecting the public interest by establishing qualifications

which are reasonably related to insuring the competency of its practitioners. As the appellant's Jurisdictional Statement indicates, the Court in *Schware* concerned itself with New Mexico's refusal to admit the petitioner therein on the basis that he had not demonstrated a "good moral character". While this also is a requirement in Minnesota, it is not the requirement of which is in dispute here. The dispute here centers solely on the educational background of the appellant and therefore the Court's ruling in *Schware* is inapplicable.

The appellant also makes reference to the case *Murphy v. Pennsylvania State Board of Bar Examiners, et al.*, 393 A.2d 369 (Pa. 1978) where the majority opinion refused to allow the applicant to sit for the bar examination because he had not graduated from an ABA approved law school. The appellant herein quoted the dissenting opinion in that case but the appeal of *Murphy* to this Court was dismissed, and thus it would appear the arguments made in the State Court dissenting opinion are now irrelevant. The dismissal of an appeal is a finding on the merits on the basis that it presents no substantial federal question and precludes appeals of identical cases. *Port Authority Bond Holders Protective Committee v. Port of New York Authority*, 387 F.2d 259 (2nd Cir. 1967). Not only were the issues presented in *Murphy* identical to those here, but the appellants in each case attended the same non-accredited law school.

The appellant alleges that the Minnesota decision has somehow precluded his right to travel. Specifically, the appellant makes reference to *Keenan v. Board of Law Examiners*, 317 F.Supp. 1350 (E.D.N.C. 1970) in which the Court ruled North Carolina's one year residency requirement as a condition for taking the bar examination as an unconstitutional infringement of the "right to travel".

Minnesota's rule which requires graduation from an ABA accredited law school does not in any way infringe the appellant's right to travel. The rule does not require the appellant to attend law school in Minnesota since only three of the 166 ABA accredited law schools are located there. Furthermore, Minnesota does not have any residency requirement as in *Keenan*. Minnesota simply requires that the applicant either maintain an office in Minnesota or appoint the Clerk of Court as an agent for service of process. (See Appellant's Jurisdictional Statement pp. 16, 17 (footnote 4) and 24.)

II.

MINNESOTA'S DECISION TO DENY THE APPELLANT'S PETITION FOR ADMISSION TO THE PRACTICE OF LAW RESTS ON AN ADEQUATE NON-FEDERAL BASIS TO PRECLUDE THIS APPEAL.

The appellant alleges that the successful completion of a written bar exam "should be the sole arbiter of who shall practice law". (Appellant's Jurisdictional Statement p. 7.) His argument suggests that regardless of where one attends law school, one's ability to practice in the legal profession can be reasonably tested by a written bar examination. Minnesota has at all relevant times required not only the passing of a written bar examination but also graduation from an approved law school. When presented this argument by the appellant, including the fact of his admission to the California bar, the Minnesota Court stated:

> "Even if one is not a graduate from a law school accredited either by California or the ABA, however, it is still possible to take the California Bar exam. Thus, California appears to utilize its examination as the major form of control over admissions to the bar. The situation in Minnesota is completely different. We use a two-pronged test—graduation from an accredited law school plus passage of the bar examination—to determine whether an attorney should be admitted to practice. Unlike California, we rely primarily on the educational process, and we use the bar examination only to weed out the small number who are unfit to practice law despite their exposure to educational environments of high quality." (Appellant's Jurisdictional Statement, p. 27.)

Thus, regardless of the constitutional questions at hand, Minnesota has the right to establish standards for admission to the bar which are distinct from California. The determination of these standards and the requirement of compliance with them present a non-federal basis for the decision. This is particularly true given the fact that the requirements remained the same throughout the appellant's law school career and he admitted to the Minnesota Court his full knowledge of the requirements. The Minnesota Court specifically found that in equity the appellant could not require Minnesota to take into account his specific situation. The Court stated:

> "He chose to transfer from an ABA approved school to a non-accredited one far away from his home state knowing that this move would pose problems for him if he later wanted to return to Minnesota to practice law. Thus, equity requires no waiver here. Were we to grant the waiver as requested, we would

> have to consider similar requests by students from other non-accredited law schools with chaotic results. Each and every case would have to be decided on its own merits. Undoubtedly, claims would be made as in this case that the applicants had a quality education but without any foundation for such claims by experts chosen by this Court to pass on that issue." (Appellant's Jurisdictional Statement, p. 29.)

Clearly, the appellant placed himself in a position which would not require the Court to act otherwise. As this Court stated in *The Bank of the United States v. The Bank of Georgia,* 10 Wheat. (U.S.) 333 (1825):

> "And in respect to persons equally innocent, where one is bound to know and act upon his knowledge, and the other has no means of knowledge, there seems to be no reason for burdening the latter with any loss and exonoration of the former." (P. 343-344.)

CONCLUSION

For all the foregoing reasons, appellee moves that this appeal be dismissed.

GISLASON, DOSLAND, MALECKI,
GISLASON & HALVORSON
Attorneys for Appellee
One South State Street
New Ulm, Minnesota 56073
Phone: (507) 354-3111